

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

BETTY AGEE, Individually and as
Representative of the Estate of RICHARD
AGEE, *et al.*,

Plaintiffs,

v.

A.W. CHESTERTON, *et al.*,

Defendants.

Civil Action No. 06-668 SLR

JURY TRIAL DEMANDED

ANSWER OF AMERICAN STERILIZER COMPANY

Defendant American Sterilizer Company ("ASC") answers the numbered paragraphs of Plaintiffs' Complaint as follows:

ALLEGATIONS AS TO JURISDICTION AND VENUE

ASC states that it is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business in Pennsylvania; lacks knowledge or information sufficient to form a belief as to the truth of the allegations of the states of residence of the plaintiffs or the other defendants and therefore lacks sufficient information to determine whether complete diversity exists between all plaintiffs and all defendants, and therefore denies that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332; denies the allegations of the amount in controversy as to each named plaintiff and that the amount is within the subject matter jurisdiction of this Court; and specifically denies that this Court has personal jurisdiction over ASC.

STATUTE OF LIMITATIONS

ASC states that plaintiffs' allegations with respect to statutes of limitations are statements of law that require no answer. To the extent an answer may be required, ASC admits that the Delaware District Court must apply the substantive law of the state in which they sit; ASC denies the allegations in the plaintiffs' statement regarding Statutes of Limitations and the Delaware Savings Statute.

BACKGROUND FACTS – THE PLAINTIFFS

1. ASC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.
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BACKGROUND FACTS – THE DEFENDANTS

118. ASC incorporates its answer to all of plaintiffs' averments and allegations as set forth above as if fully stated herein.

119. Paragraph 119 of the Complaint merely provides a definition for a term and therefore does not require an answer. To the extent that an answer is required, ASC denies the allegations of paragraph 119.

120. ASC states that none of the allegations in paragraph 120(a) – (bb) of the Complaint relate to ASC, and that ASC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 120 of the Complaint.

121. Paragraph 121 of the Complaint merely provides a definition for a term and does not require an answer. To the extent that an answer is required, ASC denies the allegations of paragraph 121.

122. ASC states that the allegations in paragraph 122 of the Complaint do not relate to ASC, and that ASC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 122.

123. Paragraph 123 of the Complaint merely provides a definition for a term and does not require an answer. To the extent that an answer is required, ASC denies the allegations in paragraph 123.

124. ASC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 124 of the Complaint regarding Foster Wheeler Corporation; ASC denies the remaining allegations in paragraph 124.

DEFENDANTS' CONDUCT AND PLAINTIFFS' DECEDENT'S [sic] INJURY

125. ASC incorporates its answer to all of plaintiffs' averments and allegations as set forth above as if fully stated herein.

126. Paragraph 126 of the Complaint contains a statement of law and the definition of a term and does not require an answer. To the extent that an answer is required, ASC denies the allegations in paragraph 126.

127. Paragraph 127 of the Complaint merely provides the definition for a term and does not require an answer. To the extent that an answer is required, ASC denies the allegations in paragraph 127.

128. ASC denies the allegations in paragraph 128 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 128.

129. ASC denies the allegations in paragraph 129 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 129.

130. ASC denies the allegations in paragraph 130 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 130.

COUNT ONE

131. ASC incorporates its answer to all of plaintiffs' averments and allegations as set forth above as if fully stated herein.

132. ASC denies the allegations in paragraph 132 of the Complaint.

133. ASC denies the allegations in paragraph 133 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 133.

134. ASC denies the allegations in paragraph 134 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 134.

COUNT TWO

135. ASC incorporates its answer to all of plaintiffs' averments and allegations as set forth above as if fully stated herein.

136. Paragraph 136 is a statement of legal theories and requires no answer. To the extent that an answer is required, ASC denies the allegations in paragraph 136 of the Complaint.

137. ASC denies the allegations in paragraph 137 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 137.

138. ASC denies the allegations in paragraph 138 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 138.

139. ASC denies the allegations in paragraph 139 of the Complaint.

140. ASC denies the allegations in paragraph 140 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 140.

141. ASC denies the allegations in paragraph 141 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 141.

142. ASC denies the allegations in paragraph 142 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 142.

143. ASC denies the allegations in paragraph 143 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 143.

144. ASC denies the allegations in paragraph 144 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 144.

145. ASC denies the allegations in paragraph 145 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 145.

146. ASC denies the allegations in paragraph 146 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 146.

147. ASC denies the allegations in paragraph 147 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 147.

COUNT THREE

148. ASC incorporates its answer to all of plaintiffs' averments and allegations as set forth above as if fully stated herein.

149. Paragraph 149 is a statement of legal theories and requires no answer. To the extent an answer is required, ASC denies the allegations in paragraph 149 of the Complaint.

150. ASC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 150 of the Complaint.

151. ASC denies the allegations in paragraph 151 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 151.

152. ASC denies the allegations in paragraph 152 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 152.

153. ASC denies the allegations in paragraph 153 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 153.

154. ASC denies the allegations in paragraph 154 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 154.

COUNT FOUR

155. ASC incorporates its answer to all of plaintiffs' averments and allegations as set forth above as if fully stated herein.

156. Paragraph 156 is a statement of legal theories and requires no answer. To the extent that an answer is required, ASC denies the allegations in paragraph 156 of the Complaint.

157. ASC denies the allegations in paragraph 157 as they relate to ASC, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 157.

158. ASC denies the allegations in paragraph 158 of the Complaint.

AFFIRMATIVE DEFENSES

ASC pleads and sets forth separately and distinctly the following defenses to each and every allegation and cause of action of plaintiffs' complaint, as though stated separately.

FIRST DEFENSE

This Court lacks jurisdiction over the person of ASC.

SECOND DEFENSE

This Court lacks subject matter jurisdiction.

THIRD DEFENSE

The Complaint fails to state a claim against ASC upon which relief can be granted.

FOURTH DEFENSE

The Complaint is barred by the statutes of limitations of the State of Delaware and the various states in which the 117 plaintiffs reside.

FIFTH DEFENSE

Joinder of the claims of the 117 named plaintiffs is improper.

SIXTH DEFENSE

Plaintiffs' claims are barred by the doctrines of laches, estoppel and waiver.

SEVENTH DEFENSE

Plaintiffs' claims are barred because Plaintiffs have "unclean hands."

EIGHTH DEFENSE

Plaintiffs have failed to join necessary and indispensable parties.

NINTH DEFENSE

To the extent that Plaintiffs allege a claim of civil conspiracy, which ASC expressly denies, Plaintiffs have failed to allege a valid underlying tort upon which to base such a claim.

TENTH DEFENSE

To the extent any of the Plaintiffs or their decedents were injured, then such injuries were proximately caused by the superseding and/o intervening conduct or intentional acts of third

persons for whose conduct ASC is not responsible, or with whom ASC has no legal relationship or duty to control, or by conditions or other factors that existed prior or subsequent to the occurrences that form the bases for Plaintiffs' Complaint against ASC.

ELEVENTH DEFENSE

To the extent that any Plaintiff or Plaintiff's decedent was injured, the Plaintiff or the decedent assumed the risk of injury with full knowledge of all attendant circumstances, and said assumption of the risk proximately contributed to those injuries.

TWELFTH DEFENSE

If ASC is found to be liable, such liability being specifically denied, then the liability of the other named defendants is active and primary, and any such liability on the part of ASC is passive and secondary.

THIRTEENTH DEFENSE

The alleged injuries of Plaintiffs or Plaintiffs' decedents were solely or substantially caused by disease or other factor for which ASC is not responsible.

FOURTEENTH DEFENSE

The activities about which Plaintiffs complain are protected by the rights of freedom of speech and association guaranteed by the First and Fourteenth Amendments to the United States Constitution and any comparable provisions of applicable state constitutions or charters.

FIFTEENTH DEFENSE

Plaintiffs' claims are preempted by applicable federal, state and local laws, statutes, standards or regulations.

SIXTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the failure of Plaintiffs or their decedents to use reasonable care to minimize or mitigate damages.

SEVENTEENTH DEFENSE

If Plaintiffs or Plaintiffs' decedents sustained injuries and/or damages as alleged, such injuries and/or damages, if any, were caused by Plaintiffs' or Plaintiffs' decedents' own conduct and contributory negligence, contributory fault, and/or comparative fault. Such acts, omissions, or fault of Plaintiffs or their decedents operate as a complete bar to Plaintiffs' recovery herein, or, if not a complete bar, then they operate to reduce Plaintiffs' recovery herein to a degree commensurate to Plaintiffs' or their decedents' relative degree of fault.

EIGHTEENTH DEFENSE

ASC's conduct was at all times in conformity with the state of the law existing at the time of the alleged exposure or injury.

NINETEENTH DEFENSE

To the extent that Plaintiffs seek punitive damages, such claims violate the Due Process Clause of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and/or the equivalent provisions of the applicable state constitutions or charters.

TWENTIETH DEFENSE

Plaintiffs' claims are barred by the doctrines of *res judicata* and/or collateral estoppel.

TWENTY-FIRST DEFENSE

ASC is not a proper party to this action.

TWENTY-SECOND DEFENSE

At all times pertinent herein, Plaintiffs' or Plaintiffs' decedents' employers were sophisticated users of asbestos-containing products and the employers' negligence in providing such products or failing to warn employees of hazards associated with such products was a superseding and/or intervening cause of Plaintiffs' or Plaintiffs' decedents' injuries.

TWENTY-THIRD DEFENSE

ASC is entitled to set off any settlement, judgment, or similar amounts received by Plaintiffs against any judgment rendered in favor of Plaintiffs herein.

TWENTY-FOURTH DEFENSE

Prior to the filing of this action, none of Plaintiffs informed ASC of any breach of any express and/or implied warranty, and consequently Plaintiffs' claims of breach of express or implied warranty are barred as to ASC.

TWENTY-FIFTH DEFENSE

Plaintiffs or their decedents improperly used or mishandled ASC products, and such misuse was the proximate cause of Plaintiffs' or Plaintiffs' decedents' injuries.

TWENTY-SIXTH DEFENSE

There was no negligence, gross negligence, misconduct, willful misconduct, or malice (actual or legal) on the part of ASC as to Plaintiffs or their decedents.

TWENTY-SEVENTH DEFENSE

Any exposure of Plaintiffs or their decedents to ASC's products was so minimal as to not be a proximate or legal cause of any claimed injury.

TWENTY-EIGHTH DEFENSE

As between ASC and Plaintiffs, it is unlawful, inequitable, and in violation of ASC's contractual, statutory and constitutional rights to apply statutes, laws or principles of law other than, or different from, those which existed for the period of time when ASC sold or manufactured its products at issue in this case.

TWENTY-NINTH DEFENSE

The state of the medical and scientific knowledge, and the published literature and other materials reflecting that knowledge, at all time pertinent herein, were such that ASC neither knew nor could have known that any asbestos in its products presented a foreseeable risk of harm to any person in the normal and expected use of ASC's products.

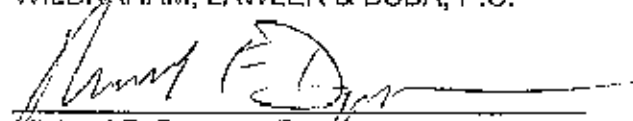
THIRTIETH DEFENSE

ASC reserves the right to assert any additional defenses which might come to its attention or which might be developed during the pendency of this action.

WHEREFORE, Defendant American Sterilizer Company prays that Plaintiffs' Complaint be dismissed, with costs and reasonable attorneys fees assessed against Plaintiffs.

WILBRAHAM, LAWLER & BUBA, P.C.

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